

NELSON P. COHEN  
United States Attorney

STEPHEN COOPER  
Assistant United States Attorney  
Federal Building & U.S. Courthouse  
101 12th Avenue, Room 310  
Fairbanks, Alaska 99701  
Phone: (907) 456-0245  
Fax: (907) 456-0577  
Email: Stephen.Cooper@usdoj.gov

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	Case No. 4:04-cr-00033-JWS
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>PLAINTIFF'S STATEMENT FOR</u></b>
	)	<b><u>SENTENCING ON REMAND</u></b>
JOHNNY LEE NAPIER,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, the United States of America, offers the following regarding sentencing on remand from the Ninth Circuit.

In accordance with the Court's Order filed December 18, 2006 (doc. #66), the restitution aspect of the original Judgment remains in effect, and the only matter to

address at the sentencing hearing of January 4, 2007, will be the mental health condition.

Plaintiff concurs in the analysis and findings of the Presentence Report as revised November 22, 2006, and also in the resolution of defendant's objections to the revised PSR as set forth in the Second Addendum to the PSR, and the Sentencing Recommendation by the probation officer.

The Second Addendum has fairly and thoroughly met defendant's objections, by citation to the relevant evidence, and that statement of the evidence is adopted and incorporated herein by reference in support of imposition of the mental health counseling requirement as a condition of supervised release.

Further, the Ninth Circuit has already established as the law of this case, that this Court did not abuse its discretion in imposing that condition on the present record. See 463 F.3d 1040, 1045 (9th Cir. 2006), where the Circuit found that because of defendant's history of violence towards women, his three domestic assault convictions over nearly 15 years involving striking and choking his victims, the resulting need to deter further assaults and to protect the public, the fact that the mental health treatment condition provides defendant with needed correctional treatment and that it involves no greater deprivation of liberty than is reasonably

necessary to achieve these ends, the statutory factors prescribed in 18 U.S.C. § 3553 through § 3583(d) were satisfied.

To this must be added the gambling-related factors cited in the Second Addendum to the PSR. Defendant's gambling conviction was nine years before the start of his fraudulent conversions of grant money in this case. As the probation officer observes, defendant embezzled in excess of \$100,000, accompanied by his statement to his daughter of his intent to divert it to payment of a large debt. The impulse to eliminate one's debts by a risky attempt to obtain money without earning it is common to gambling and large-scale embezzlement. There was no accounting that showed defendant used the diverted funds for his stated purpose, but the evidence did reveal numerous conversions of grant funds to cash, and expenditures for personal, business and non-grant related purposes. The addictive nature both of gambling and of embezzlement tends to make this a legitimate additional factor supporting the mental health treatment condition.

This, and the felony drug conviction, combined with the series of domestic assaults, form a continuum which cannot be ignored. Viewed not in isolation but in their totality as they must be, all these events create sufficient grounds to find that mental health evaluation and potentially treatment are needed, and are in conformity

to the standards prescribed in 18 U.S.C. § 3583(d) which the Ninth Circuit found were satisfied for only a portion of the cited events in defendant's history.

Plaintiff does not intend to offer evidence unless necessitated by matters arising at the sentencing hearing.

For the foregoing reasons, sentence should be entered in accordance with the analysis reflected above and in the updated PSR, the Second Addendum and the Sentencing Recommendation of the Probation Office.

RESPECTFULLY SUBMITTED this 28th day of December, 2006 at Fairbanks, Alaska.

NELSON P. COHEN  
United States Attorney

/s/ STEPHEN COOPER  
Assistant United States Attorney  
Federal Building & U.S. Courthouse  
101 12th Avenue, Room 310  
Fairbanks, Alaska 99701  
Phone: (907) 456-0245  
Fax: (907) 456-0577  
Email: Stephen.Cooper@usdoj.gov  
Alaska Bar #1169028

**CERTIFICATE**

I certify that a true and correct copy of the foregoing

**PLAINTIFFS STATEMENT FOR SENTENCING ON REMAND**

was sent to the following counsel of record on December 28, 2006, via Court's electronic filing system:

Mary C. Geddes, Asst. Federal Defender, Anchorage, Alaska

/s/ Stephen Cooper  
Office of the United States Attorney